SUPREME COURT OF VICTORIA
COURT OF APPEAL

S EAPCR 2025 0008

EIDER JOSE HENRIQUEZ MACHADO Applicant

v

THE KING Respondent

JUDGES:	BOYCE JA
WHERE HELD:	Melbourne
DATE OF HEARING:	28 March 2025
DATE OF JUDGMENT:	14 April 2025
MEDIUM NEUTRAL CITATION:	[2025] VSCA 77
JUDGMENT APPEALED FROM:	*DPP v Henriquez Machado* [2024] VCC 1792 (Judge Maidment)

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE DETERMINED BY A SINGLE JUDGE PURSUANT TO S 315 OF THE *CRIMINAL PROCEDURE ACT 2009*

CRIMINAL LAW – Application for leave to appeal – Sentence – Obtaining financial advantage by deception – Attempting to obtain financial advantage by deception – Applicant Chief Financial Officer at construction company – Applicant obtained over $900,000 from company through unauthorised use of credit cards and creation of false invoices – Applicant attempted to obtain over $43,000 by similar means – Whether sentencing judge erred by rejecting evidence of remorse – Whether sentences manifestly excessive – No reasonable prospect that Court of Appeal would reduce total effective sentence – Sentences not manifestly excessive – Leave to appeal refused.

Criminal Procedure Act 2009, s 280(1)(b).

Barbaro v The Queen (2012) 226 A Crim R 354; *DPP v Bulfin* [1998] 4 VR 114; *Dyason v The Queen* (2015) 251 A Crim R 366, considered.

Counsel

Applicants:	Ms BF Franjic
Respondent:	Mr J O’Connor

Solicitors

Applicants:	Chambers Criminal Lawyers
Respondent:	Ms A Hogan, Solicitor for Public Prosecutions

BOYCE JA:

Introduction

1 The applicant pleaded guilty in the County Court to four charges of obtaining a financial advantage by deception and two charges of attempting to obtain a financial advantage by deception. On 8 November 2024, he was sentenced as follows.

Charge	**Offence**	**Maximum**	**Sentence**	**Cumulation**
Indictment P11346465.1				
1	Obtaining financial advantage by deception[1]	10 years	2 years	6 months
2	Obtaining financial advantage by deception[2]	10 years	30 months	Base
3	Obtaining financial advantage by deception[3]	10 years	21 months	4 months
4	Obtaining financial advantage by deception[4]	10 years	16 months	–
5	Attempt to obtain financial advantage by deception[5]	5 years	8 months	–
6	Attempt to obtain financial advantage by deception[6]	5 years	5 months	–
Total Effective Sentence:		3 years and 4 months' imprisonment		
Non-Parole Period:		2 years		
Pre-Sentence Detention Declaration pursuant to s 18(1) of the *Sentencing Act 1991*:		N/A		

1Contrary to s 82(1) of the *Crimes Act 1958*.

2Contrary to s 82(1) of the *Crimes Act 1958*.

3Contrary to s 82(1) of the *Crimes Act 1958*.

4Contrary to s 82(1) of the *Crimes Act 1958*.

5Contrary to s 321M and s 82(1) of the *Crimes Act 1958*.

6Contrary to s 321M and s 82(1) of the *Crimes Act 1958*.

Section 6AAA Statement:	5 years' imprisonment with non-parole period of 3 years
Other Relevant Orders:	N/A

2 Charges 1 and 2 were 'rolled-up' charges.

The offending

3 The applicant obtained employment as the Chief Financial Officer at the victim construction company in April 2021. There were conditions placed upon the applicant's employment. He agreed, for instance, that he would obtain prior approval for any expenditure that he caused to be made on the company's behalf. He was not permitted to purchase items of a personal nature, or obtain personal credit. He was not permitted to use credit accounts and facilities for personal purchases. He was issued with a NAB credit card that was to be used in accordance with these terms. There was also a credit card policy. The applicant was entitled to use this card for company expenses in accordance with the policy. The managing director, and owner of the company, had an AMEX card. The applicant's only permitted use of this card was to make payments on instruction from the managing director.

4 The applicant's offending was able to be grouped into two broad categories. First, it was contended that the applicant had used the NAB and AMEX cards for his own purposes. The applicant made payments for non-company expenses and would then submit an altered invoice or receipt to the company's expense tracking and reconciliation software platform. This permitted the applicant to make it seem as if these purchases related to company expenses. At other times, the applicant would create false invoices in order to pay for personal items.

5 The applicant's offending also took on a second form. The applicant would generate false invoices unrelated to purchases made by him. These false invoices were then submitted to the company finance team for payment. The false invoices purported to be issued by businesses that had dealt with the company and were made to appear as if such businesses had invoiced for services carried out for the company. By this method, the applicant enabled payments to be made to his own personal accounts.

6 Charge 1 'rolled-up' some 18 instances of offending of the first type. Such offending occurred between 5 March 2022 and 28 February 2023. The total amount obtained by the applicant through commission of this charge was $124,529.71.

7 Charge 2 'rolled-up' some 20 instances of offending of the second type. This offending took place between 8 March 2022 and 14 February 2023. The total amount obtained by the applicant through commission of this charge was $585,590.50.

8 In addition, there were also individual — as in not 'rolled-up' — instances of offending of the second type. Charge 3 related to offending of this type when, on 15 March 2022, the applicant obtained $128,139 by deception. Charge 4 related to offending of the second type committed on 12 April 2022 when the applicant obtained $69,025 by deception.

9 The applicant's offending the subject of charges 2, 3 and 4 netted him a total amount of $782,754.50.

10 Charges 5 and 6 were each charges of *attempting* to obtain a financial advantage by

deception. Charge 5 was an instance of an attempt by the applicant to commit the second — false invoice — type of offending. On that occasion, the applicant failed to provide bank details which would have permitted him to obtain an amount of $35,064.04. This sum was paid, instead, to a legitimate entity. The victim company was reimbursed once the error was realised. Charge 6 was an attempt to commit offending of the first type (described above) by use of the AMEX card. Although the applicant had ordered a dining table and TV unit valued at $8,240, these items were not delivered to him, and the order was subsequently cancelled.

11 The total financial advantage actually obtained by the applicant exceeded $900,000. His total attempted financial advantage stood at over $43,000.

12 In March 2023, the victim company became aware of certain 'unusual transactions'. The applicant attended a meeting with the company, but denied all wrongdoing. Nevertheless, on 17 March 2023 a Deed of Release was signed by the applicant and the victim company. Pursuant to this Deed, the applicant agreed to repay the victim company $21,225.95. The applicant paid this amount, and then ceased employment with the company. It was only later that the full extent of the applicant's offending was revealed.

The applicant

13 The applicant was aged 39 and married with two young children at the time of sentence. He had no prior convictions.

14 The applicant had an impressive history. He had been born into poverty in Venezuela. Life there was difficult and violent. Nevertheless, the applicant excelled at school and won a scholarship to attend university. He then met his wife. During his stay at university, the applicant obtained work at an auditing firm that was part of the KPMG group.

15 The applicant came to Australia on a student visa in 2010. He worked in accounting and bookkeeping, and then got a job at Crown Casino where he worked for 8 years. He also completed a Master of International Finance and a Master of Business Administration at Deakin University. He commenced working for the victim company in 2021. The applicant made various contributions to his local community. He was a founding member of the Venezuelan Association of Australia. He took part in fundraising activities and community events connected with the Association.

16 A relevant aspect of the applicant's past was that, upon leaving his employment at the victim company, he — in May 2023 — obtained the position of Chief Financial Officer at a different company. This latter company was described, in one of the character references relied on by the applicant, as a 'Melbourne-based venue and hospitality group'. It seems that the applicant — at least initially — failed to inform the hospitality company of his earlier offending. But the applicant *did* notify the hospitality company of this offending once police were involved. This occurred — it seems — sometime in June 2023. Despite having been furnished with knowledge of the applicant's offending, those at the hospitality company remained effusive in their praise of the applicant. As the Chief Operating Officer at the hospitality company put it:

> [The applicant's] dedication and expertise have led to the most significant period of growth [the company] has ever seen.

17 The 'Head of People and Culture' at the hospitality company remarked of the applicant that

> [o]ne of [the applicant's] most significant contributions has been his focus on compliance and risk management. He has implemented several initiatives to enhance our financial controls and reduce the risk of fraud or errors.

18 At the plea, the applicant relied on the fact that — in addition to the $21,225.95 that he had paid back to the victim company — he had offered, on more than one occasion, to transfer two properties held by him to the victim company. The applicant maintained that, had these offers been accepted, the transfer of property would have resulted in total restitution. As it happened, these offers were rebuffed. The properties held by the applicant were later frozen, and the applicant was declared bankrupt.

19 The applicant relied on statements of remorse that had been made by him. These statements were made to various character referees. It was submitted that the applicant was truly remorseful. The applicant tendered two psychological reports; one authored by a Mr Peter Hanley, the other by Mr Kyle Miller. The applicant had, at the time of sentence, recently undergone surgery to his left foot. It seems that the prognosis regarding this foot was positive.

20 The applicant submitted that his offending had occurred at a difficult time for him. The applicant had recently lost a good friend by suicide, and the applicant had been abusing alcohol and drugs. The psychological evidence suggested that the applicant was suffering from an adjustment disorder. The applicant had engaged in psychological counselling with Mr Miller. The applicant enjoyed significant support in the community.

21 The applicant accepted that he had to go to gaol on account of his offending.

Reasons for sentence

22 The sentencing judge took a particularly dim view of the applicant's signing of the Deed of Release. The judge considered that such signing constituted a 'deceptive attempt by [the applicant] to minimise the amount [the applicant] had obtained dishonestly and to confine the amount of reparation [the applicant] would be required to pay [his] employer to what had been discovered at that stage of the company investigations'.[7]

23 The judge noted, also, that the applicant's offending had had a 'significant impact' upon the owner and managing director of the victim company.[8]

24 The judge made reference to the two psychological reports tendered by the applicant, as well as the many character references that were also relied upon. The judge noted a letter of apology that had been drafted by the applicant and was addressed to his old employer.[9]

7*DPP v Henriquez Machado* [2024] VCC 1792, [19] ('Reasons').

8Reasons, [21]. In his victim impact statement the owner and managing director of the victim company outlined the particularly devastating consequences for the company caused by the applicant's offending. The applicant had offended, it seems, while the company was experiencing considerable difficulties as a result of the COVID-19 pandemic.

9Reasons, [23]–[31].

25 The judge took into account the applicant's 'somewhat deprived background' as well as his difficult childhood. The judge remarked upon the applicant's 'extraordinary ability' at school and made reference to his post-graduate accomplishments achieved in Australia.[10] The judge accepted that the applicant would be particularly concerned about his family while he was in custody.[11]

26 The judge referred to the context against which the applicant's offending had taken place. This included the applicant's sadness at the suicide of his good friend in 2019; that the applicant was suffering from an adjustment disorder; and that the applicant had abused alcohol and drugs. The judge concluded that the applicant's mental state was relevant, but only in a 'general sense'.[12]

27 The judge noted that the applicant had engaged in psychological therapy. Nevertheless, the judge took into account Mr Miller's opinion, which was that the applicant's insight into his offending had developed, but there was still some way to go before full insight was to be achieved. Mr Miller, the judge noted, had opined that the applicant tended initially to deflect blame onto others. Nevertheless, the applicant was now beginning to develop a greater understanding.[13] The judge noted Mr Miller's opinion that, at the time of sentence, the applicant did not 'fully [appreciate] the exploitative nature of his offending towards the complainant company'. Mr Miller considered that the applicant would be 'able to make further progress in addressing his outstanding needs with ongoing treatment'.[14]

28 It was in this context that the judge made certain findings that concerned the applicant's case for remorse. These findings were the subject of direct attack by the applicant at the hearing of this application. As to the applicant's remorse, the judge expressed himself as follows:

> So, whilst it is suggested that you are remorseful, and certainly you expressed remorse in your letter to [the victim employer], it does not seem that you have yet reached a full understanding of the nature and implications of your offending behaviour, even at the date of that report, 9 October 2024, a year and a half after the conclusion of your offending conduct and having had more than ample time to reflect.
>
> On your behalf, [defence counsel] stressed your difficult background. He stressed the credit that you must receive for your plea of guilty at the earliest practical opportunity, that you are entitled to full credit for the utilitarian value of your plea and the fact that that is consistent with remorse. *However, I am far from convinced that you are genuinely remorseful as distinct from being concerned about the impact on yourself, your family and*

10Reasons, [32], [34].

11Reasons, [37].

12Reasons, [38], [40].

13Reasons, [42]–[43].

14Reasons, [46].

> *your financial situation. The evidence suggests genuine remorse for your offending conduct is yet to be achieved*.[15]

29 The judge noted that the applicant had made no attempt during the course of the investigation to assist in unravelling the full extent of his offending.[16] Yet the judge was still prepared to conclude that the applicant had 'good prospects of rehabilitation'. The judge took into account the applicant's good character, the contributions that he had made to the community, as well as the physical difficulties suffered by the applicant at the time of sentence, namely, the injury to the applicant's left foot.[17]

30 The judge made reference to sentencing remarks delivered by Judge David Sexton in a different case.[18] These remarks — in their terms — recalled the oft-cited dicta of Charles JA found in *Director of Public Prosecutions v Bulfin* ('*Bulfin*').[19] Amongst other matters, this dicta serves to emphasise the importance of general deterrence in cases like the present. The judge said that he had had regard to current sentencing practices. Various comparable cases had apparently been supplied by the parties.[20]

Proposed grounds of appeal

31 The applicant's proposed grounds of appeal are two in number. They are expressed in the following terms.

> 1. The learned sentencing judge erred in the treatment of the applicant's remorse
>
> 2. The individual sentences, orders for cumulation and total effective sentence are manifestly excessive[21]

15Reasons, [48]–[49] (emphasis added).

16Reasons, [50].

17Reasons, [52]–[54].

18Reasons, [56], quoting *DPP v Simmons* [2024] VCC 665, [19].

19[1998] 4 VR 114. The judge also made reference to this Court's decision in *Dyason v The Queen* (2015) 251 A Crim R 366; [2015] VSCA 120.

20Reasons, [58].

21The second proposed ground of appeal has, subjoined to it, a considerable number of particulars. These particulars purport to explain why the sentences are manifestly excessive. They are as follows: a) Early guilty plea; b) Remorse; c) Letter of apology to the primary victim; d) Efforts at restitution; e) No prior convictions; f) Character references; g) No subsequent or pending matters; h) First term of imprisonment; i) Mental health difficulties

Ground 1

Submissions

32 Pursuant to ground 1, it was submitted that at the passage taken from the judge's reasons for sentence extracted above,[22] the judge had effectively rejected that the applicant was in any way remorseful. But it was submitted that it was not open to the judge to have drawn such a conclusion. This was so, it was submitted, due to five separate matters. These five matters were said to establish that the applicant *was* truly remorseful. In summary, those matters were as follows: first, the applicant's early plea of guilty; secondly, his expressions of remorse to various character referees; thirdly, the applicant's letter of apology; fourthly, the expressions of remorse by the applicant that could be found in the two psychological reports that had been tendered (and in what could be inferred from the applicant's engagement in treatment with Mr Miller); and fifthly, the applicant's efforts at restitution (the payment of the $21,225.95 pursuant to the Deed of Release and the offers of transfer of real property) which would — if completed — have seen the victim company fully compensated.

33 It was submitted that the judge had made no reference to the offers to transfer property. Nor had there been any reference by the judge to those parts of the character references where the applicant had expressed remorse. It was put that the judge could not have accorded the applicant's letter of apology sufficient weight. This was so because the judge had commented that this letter only 'suggested' remorse. It was submitted, also, that the judge had failed adequately to have regard to the significance of the applicant's expressions of remorse to the two psychologists that had been consulted. It was submitted that the applicant's case was replete with evidence of his remorse. The applicant had clearly discharged his onus establishing that he was remorseful.

34 Counsel for the respondent submitted that the judge had not erred in his treatment of remorse. Counsel submitted that the onus fell on the applicant to establish genuine remorse. It was submitted that the applicant had failed to discharge this onus. Counsel placed particular reliance on the following passage taken from *Barbaro v The Queen*:

> It follows, in our view, that a person wishing to rely on remorse as a

will make the burden of imprisonment more onerous; j) Physical health problems will make imprisonment more burdensome; k) Deteriorating mental health during the offending; l) Marital difficulties; m) Problematic drug and alcohol use; n) Impoverished, violent and dysfunctional background; o) Impressive educational and employment history; p) Heavily involved father to two young children aged 9 and 7; q) Effect of applicant's imprisonment on his family in Australia and Venezuela will make imprisonment more burdensome; r) Outstanding voluntary contributions to the Australian Venezuelan community over a lengthy period; s) Obtaining of employment while on bail and employment up until the time of sentence; t) Voluntary seeking of offence specific treatment while on bail; u) Excellent prospects of rehabilitation.

22See [27] above.

> mitigating factor needs to satisfy the court that there is genuine penitence and contrition and a desire to atone. In many instances, the most compelling evidence of this will come from testimony by the offender. A judge is certainly not bound to accept second-hand evidence of what the offender said to a psychiatrist or psychologist or other professional, let alone testimonials from family or friends, or statements from the Bar table.[23]

35 It was submitted that the psychological evidence established that any remorse experienced by the applicant was heavily qualified. Moreover, it was submitted by the respondent that the applicant's post-offence conduct told against the existence of remorse. The applicant had paid back $21,225.95, but nothing further. It was contended that the later offers of 'property-transfer' had occurred in the context of civil and criminal litigation. It was thus open to characterise these offers as attempts by the applicant to better his forensic position; they were not signs of true repentance.

36 Counsel for the respondent also relied, in this respect, on one aspect of Mr Hanley's report. It was the part where Mr Hanley had set out the following:

> On 2 September 2024 [the applicant] told me that he is currently working as a CFO for an events and catering company. [The applicant] said that the company is aware of his current criminal charges. *However, he indicated that he had still not informed CPA Australia about his criminal charges and financial situation, despite my suggestion on 3 June 2024 that he is probably obligated to do so*.[24]

37 Counsel for the respondent submitted that the fact that the applicant had not informed 'CPA Australia' of his offending also counted against remorse.

Analysis

38 I am persuaded that the applicant's ground 1 is reasonably arguable. I fully accept that a sentencing judge is not obliged to accept statements of remorse made to character referees and psychologists. And I accept, also, that by any estimation the applicant had a way to go before he could be said to have achieved full remorse and/or insight into the effects of his offending. It is apt, in this regard, to set out a portion of Mr Miller's report. This report was current at the time of the plea. In respect of the level of remorse and insight experienced by the applicant, Mr Miller expressed himself in the following terms.

> **Initial Treatment Engagement**
>
> During his initial treatment engagement, though [the applicant] verbalised responsibility for his offending behaviour, he tended to project blame onto his boss and focused on the negative culture of the workplace. He said he felt devalued and underappreciated for his work, drawing distinctions to the self-assured status he maintains in his current workplace. Cognitive distortions that reflected his limited insight into the exploitative nature of his

23(2012) 226 A Crim R 354, 365 [38] (Maxwell P, Harper JA and T Forrest AJA); [2012] VSCA 288.

24Emphasis added.

offending behaviour were evident.

Notwithstanding some barriers to adopting a posture of full responsibility for his offending, through the support of his previous therapist he showed an understanding of the nature of his mental health problems at the time of his offending, and the role of his cultural beliefs in his past reluctance to seek support. For example, he told me:

> Where I'm from [mental health issues] are a massive sign of weakness.

Progress and Conclusions

As treatment has progressed, [the applicant] has shown an understanding of the relationship between his experience of poor mental health and his offending behaviour. Consistent with his pragmatic approach, his efforts to change have primarily focused on improving his personal health routine (including sleep and exercise), establishing boundaries between his work and personal life, minimising his alcohol consumption, and avoiding substance use. He has demonstrated insight into the impact of AOD consumption on his overall functioning, and a recognition that this must be moderated. Furthermore, he has verbalised an understanding of the impact of his formative years in Venezuela upon his personal expectations of status and success. For example he said:

> Becoming better at whatever you want to become better at; it's how I got out of where I was. But it's a never-ending pursuit of something better.

As his understanding of his offending has developed, [the applicant] has expressed guilt associated with his offending behaviour in this way:

> I'm going to say that I'm guilty, because I am … I accept my own part.
>
> I enjoyed the power … [my wife] told me to walk away; I didn't listen … I should have left.
>
> At the time it didn't feel that I was hurting anyone…it didn't feel like that much money … it's not who I am; it's disgusting now.
>
> Feeling bad about it isn't good enough. I need to do more to make sure it doesn't happen again.
>
> Despite the fact I know some things now, it doesn't change the fact I'm sorry for what I did

Whilst [the applicant's] understanding of his offending and his responsibility for his decision to offend has developed, it has not been evident that [the applicant] fully appreciates the exploitative nature of his offending behaviour toward the complainant company, relative to the position of trust and responsibility that he assumed. Furthermore, his understanding of his reasons for offending continue to involve rationalisations that served to enable his offending behaviour.

Based on his engagement with me I expect that [the applicant] would be able to make further progress in addressing his outstanding needs with

> ongoing treatment, although it may take time for [the applicant] to be able to develop the perspective necessary to fully grasp the nature and implications of his offending behaviour.
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> I confirm that I am available to provide ongoing treatment to [the applicant]. No further appointments have been scheduled at the time of preparing this report but [the applicant] has indicated a desire to continue seeing me for treatment.

39 As I understand it, and consistent with the opinion of Mr Miller set out above, the evidential position at the plea established that the applicant was genuinely remorseful, but that such remorse on the applicant's part was certainly not complete. The applicant still had a way to go in this regard and it was to be hoped that with further treatment full remorse and insight was achievable. But what is not readily apparent from the evidential matrix, at least as far as I can discern it, is any clear statement — or basis — from which an inference could be drawn that the sincerity of any remorse experienced by the applicant was to be qualified by the applicant's concern about 'the impact on [himself], [his] family and [his] financial situation'. To put this another way, it is not readily apparent to me that such remorse, as experienced by the applicant, was something in the nature of 'self-pity'.

40 I accept that a sentencing judge must be entitled to form a view about the sincerity of an offender's remorse; and that a sentencing judge is uniquely placed to make such an assessment. And it may be that, with the benefit of full argument, the basis for the particular terms of the judge's rejection of the applicant's case for remorse will become evident. But it is enough to record, at this preliminary stage, that in argument at the hearing of this matter, when the evidential basis for a finding that the applicant was essentially 'sorry for himself' rather than 'sorry for what he had done' was raised, no aspect of the evidence was pointed to by the respondent which could be said to justify the particular approach adopted by the judge. It was simply maintained that the applicant had failed to discharge the relevant onus.

41 But if the failure to discharge the onus was predicated upon a view lacking support in the evidence, the basis for the relevant conclusion may be an unstable one. Whether this is actually so remains to be seen. It is enough to say, at this stage, that I consider it at least *reasonably arguable* that his Honour did err in the manner pleaded in proposed ground 1.

42 Having found that ground 1 is reasonably arguable, the applicant would be entitled to a grant of leave unless 'there is no reasonable prospect that the Court of Appeal would reduce the total effective sentence despite there being an error in the sentence first imposed'.[25]

43 The applicant submitted that once the applicant's remorse *was* factored into the sentencing mix, together with all other matters that went in mitigation, a 'reasonable prospect' of reduction plainly existed. The respondent submitted that there was no 'reasonable prospect' of a reduction. This flowed from the applicant's senior role with the victim company and the gross breach of trust that he had committed; the high value of the financial advantage obtained; the sophisticated nature of the applicant's offending; the sustained and repeated nature of that offending; and the fact that the applicant's offending was not due to any pressing need but seemed — rather — to relate to a need to pay for home improvements and the like. There was, also, the importance of general deterrence.

44 It must be remembered that in assessing whether there exists a 'reasonable prospect' that the Court of Appeal would reduce the total effective sentence in this case, such remorse on the

25 *Criminal Procedure Act 2009*, s 280(1)(b).

applicant's part that can be factored into the sentencing equation is remorse that is far from complete. This is demonstrated by Mr Miller's opinion set out above.

45 The applicant's offending was serious, sustained and involved a considerable amount of money. It was offending committed in breach of significant trust. The applicant's position it appears permitted him, at least to some degree, to disguise his offending conduct. It was offending that was committed at a time when the victim company could ill-afford the losses caused. It was not offending committed in response to a desperate or pressing need. General deterrence loomed particularly large, notwithstanding the applicant's lack of prior convictions. In other words, many of the features described by this Court in *Bulfin* and *Dyason v The Queen*[26] were present in this case and warranted a sentence of sufficient magnitude.

46 I consider that, despite the powerful matters that could be relied upon in mitigation on the applicant's behalf, the total effective sentence of 3 years and 4 months' imprisonment, with a non-parole period of 2 years, was a relatively lenient sentence when all is said and done. Once such remorse as the applicant had achieved is taken into account, I do not consider that there is a 'reasonable prospect' that the Court of Appeal would reduce the total effective sentence; that is, even if proposed ground 1 were to succeed.

47 I would, therefore, refuse leave on ground 1.

Ground 2

48 It follows from the above that I do not consider it reasonably arguable that the sentences imposed on the applicant in this case are manifestly excessive.

49 Leave to appeal must thus also be refused on proposed ground 2.

Conclusion

50 The application for leave to appeal must be refused.

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26(2015) 251 A Crim R 366; [2015] VSCA 120.